



STATE OF MAINE  
DEPARTMENT OF  
MARINE RESOURCES

21 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0021

John Elias Baldacci  
GOVERNOR

GEORGE D. LAPOINTE  
COMMISSIONER

October 10, 2006

Ms. Hetty Richardson  
Department of Environmental Protection (DEP)  
17 State House Station  
Augusta, Maine 04333

RE: Chapter 305 Permit by Rule Standards Rule-making Proposal (Proposed Rule Number 98-P); for inclusion in the record of the October 5, 2006 hearing.

Dear Ms. Richardson:

In connection with the proposal to eliminate language in the current Permit by Rule standards in Sections 2, 3, 4, 7, 8, 9, 10, 12, 13, and 15 regarding use of chemically treated wood material in coastal waters, I would like to make the following comments:

While it is understandable that the DEP might seek to eliminate requirements that are not enforceable such as air curing chemically treated lumber and other wood material in an upland location prior to construction, use of chemically untreated lumber is preferred and is a recommendation that this agency often makes in connection with proposed projects that require a full NRPA permit. It is my understanding that the current generation of chemically treated wood products have reduced arsenic levels to protect human health, but have increased levels of copper in order to maintain preservative effectiveness. Recent studies have demonstrated that it is copper that is of most concern to marine and other aquatic environments, and that the new generation of chemically treated wood products would have an increased deleterious affect.<sup>1</sup> In any case while the use of chromated copper arsenate (CCA) treated wood in residential applications has been phased out, the use of CCA is still permitted in commercial applications such as piers and wharves. Treated wood used in marine applications is impregnated with a much higher concentration of CCA preservative than for previous residential applications.

It would seem to make sense to maintain some protective measures that might reduce the level of harmful chemicals introduced into our environment. I urge the DEP and the Board of Environmental Protection (BEP) **not** to make these proposed changes, or at the very least to retain the language stating the preference for the use of untreated material.

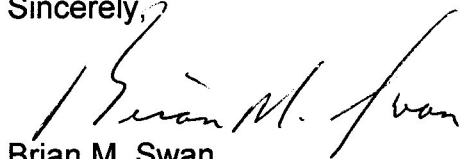
In connection with the proposed changes to Section 9. Crossings, I would like to make these comments:

While the inclusion of coastal wetlands, and Great ponds in Section 9(B)(3), as proposed, is consistent with the standards in Section 9, the period of October 2 to July 14 when approval of timing of the activity is required does not address all potential concerns related to crossings of many marine waters. Cable laying operations, for example, have the potential to interfere with commercial fishing and recreational boating in Maine coastal waters during the period of July 15 to October 1. The requirement for approval of timing of activity from DMR for all utility crossings of marine and estuarine waters within the State's jurisdiction **should** be considered.

Approval of timing of activity should rest with the resource agency responsible for the conservation of the resource that may be affected. It would make sense **not** to add "unless otherwise approved by the department" in Section 9. This proposed addition could circumvent the usefulness of the timing approval process.

Thank you for your consideration.

Sincerely,



Brian M. Swan  
Environmental Coordinator  
Maine Dept. of Marine Resources (DMR)

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<sup>1</sup> Effects of CCA Wood on Non-Target Aquatic Biota, Judith S. Weis, Department of Biological Sciences, Rutgers Univ., Newark, N.J., and Peddrick Weis, Department of Radiology, New Jersey Medical School, Newark, N.J. (Enclosed)